

Office Action Summary

Application No.

10/712,630

Applicant(s)

WU ET AL.

Examiner

Blanche Wong

Art Unit

2419

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11 is/are rejected.
7) ☒ Claim(s) 12-20 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____

- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date: 5Feb09
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed October 28, 2008 have been fully considered but they are not persuasive.

With regard to claim 1, Applicant agrees with Examiner that "[i]n procedure 300, ... Specification describes that the differences are determined by comparing the received fixed and variable rate signal levels from each active sector to the adjusted fixed rate signal level and the variable rate signal level from the current serving sector." Remark, p.8, para. 5. Applicant also referenced Fig. 8A wherein "[a]ccumulator 814 provides accumulated total credits DeltaCreditVV, DeltaCreditVF, DeltaCredit FV, and DeltabCreditVV" Remark, p.8, para. 6. Applicant concludes "[e]ach of the elements from claim 1 are believed to be expressly described in Applicant's Specification." Remark, p.9, para. 2. However, Examiner does not understand how the Applicant maps these support to the claimed elements "a comparator to determine differences between a plurality of signal levels received from each of the plurality of active sectors and at least the adjusted fixed rate signal level of the current serving sector; an accumulator for accumulating total credits for each of the plurality of signals from each of the plurality of active sectors based on the comparison", which give rise to additional 112, 2nd rejections. See below. Specifically, the comparator in claim 1 does not comparing the received fixed and variable rate signal levels from each active sector to the adjusted fixed rate signal level and the variable rate signal level from the current serving sector. The comparator in claim 1 determines differences between a plurality of signal levels

received from each of the plurality of active sectors and at least the adjusted fixed rate signal level of the current serving sector. The accumulator in claim 1 does not accumulating total credits DeltaCreditVV, DeltaCreditVF, DeltaCredit FV, and DeltabCreditVV. The accumulator in claim 1 accumulates total credits for each of the plurality of signals from each of the plurality of active sectors based on the comparison.

Examiner finds similar problems in claim 5. Therefore, Examiner is maintaining the previous 112, 1st rejections for claims 1-11.

Claim Objections

2. **Claims 5 and 9** are objected to because of the following informalities:

With regard to claim 5, Examiner suggests replacing "each of said plurality of signal levels from each of said plurality of active sectors" with "each of said plurality of signal levels received from said plurality of active sectors" in consistent with "each of a plurality of signal levels received from a plurality of active sectors" in lines 3-4.

With regard to claim 9, Examiner suggests spelling out DRC when the abbreviation is used for the first time.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 1-4** are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a signal level estimator and a new sector identification module in para. [067], does not reasonably provide enablement for "a signal level estimator ... a comparator to determine ...; a comparator for receiving ...; an accumulator ...; and a new sector identification module ..." as recited in claim 1. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Clearly, para. [067], and Fig. 8A, discloses the comparator to determine and the comparator for receiving is one of the same comparator 810. Additionally, the comparator does not determine the differences between a plurality of signal levels received from a plurality of active sectors and a signal level of a current serving sectors. As a matter of fact, the comparator determines the differences between a variable rate signal level of the current serving sector and a variable rate signal level of each of the plurality of active sectors, between the adjusted fixed rate signal level of the current serving sector and the variable rate signal level of each of the plurality of active sectors, between the variable rate signal level of the current serving sector and the adjusted fixed rate signal level of each of the plurality of active sectors, and between the adjusted fixed rate signal of the current serving sector and the adjusted fixed rate signal of each of the plurality of active sectors (DiffVV, DiffFV, DiffVF, DiffFF respectively), para. [0034]-[0038].

Claims 2-4 are depending from rejected claim 1.

5. **Claims 5-11** are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a comparator, an accumulator, and a best sector identifier in para. [068], does not reasonably provide enablement for “ a comparator ... delta generator ... an accumulator, ... and a best sector identifier ...” as recited in claim 5. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Para. [0068] discloses the comparator 866 determines differences 868, DiffVV, DiffFV, DiffVF, DiffFF as per procedure 300. Procedure 300 includes calculation of DeltaCreditVV, DeltaCreditVF, DeltaCreditFV, and DeltaCreditV, para. [0034]-[0038]. Subsequently, accumulator 870 provides accumulated total credits 872 to new sector identification module 874.

Claims 6-11 are depending from rejected claim 5.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 1-4** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 1, it is unclear what is meant by the term “total credit for each” in line 11 because it is unclear whether each of the plurality of signals from each

of the plurality of active sectors has a partial credit to accumulate into one total credit. If the credits are already totaled, then what is meant by "accumulating total credits".

Allowable Subject Matter

8. The following is a statement of reasons for the indication of allowable subject matter:

With regard to claim 1, the prior art of record fails to anticipate or make obvious an access terminal comprising: "a signal level estimator to deduct an offset value from a fixed rate signal level of the current serving sector *and a plurality of active sectors* to generate an adjusted fixed rate signal level for all sectors; a comparator, *coupled to the signal level estimator, to receive the adjusted fixed rate signal levels for all sectors and to determine differences between a variable rate signal level of the current serving sector and a variable rate signal level of each of the plurality of active sectors, between the adjusted fixed rate signal level of the current serving sector and the variable rate signal level of each of the plurality of active sectors, between the variable rate signal level of the current serving sector and the adjusted fixed rate signal level of each of the plurality of active sectors, and between the adjusted fixed rate signal of the current serving sector and the adjusted fixed rate signal of each of the plurality of active sectors, wherein each of the differences has a respective credit counter and wherein the comparator increments the respective one of the credit counters if the difference is less than -3db; an accumulator, coupled to the comparator, to accumulate all the credit counters and output a total credit; and a new sector identification module to receive the*

total credit and to select the best serving sector among the plurality of active sectors based on the total credits” (with emphasis).

With regard to claim 5, the prior art of record fails to anticipate or make obvious an apparatus comprising: *“a comparator to determine differences between a variable rate signal level of the current serving sector and a variable rate signal level of each of the plurality of active sectors, between an adjusted fixed rate signal level of the current serving sector and the variable rate signal level of each of the plurality of active sectors, between the variable rate signal level of the current serving sector and an adjusted fixed rate signal level of each of the plurality of active sectors, and between the adjusted fixed rate signal of the current serving sector and the adjusted fixed rate signal of each of the plurality of active sectors, wherein each of the differences has a respective credit counter; a delta generator, coupled to the comparator, to increment the respective delta credit counters; an accumulator, coupled to the delta generator, to accumulate the respective delta credit counters and to produce a total credit; and a best sector identifier, coupled to the accumulator, to identify a best serving sector from the total credit” (with emphasis).*

Allowable Subject Matter

9. Claims 12-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edan Orgad can be reached on 571-272-7884. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blanche Wong/
Examiner, Art Unit 2419
February 16, 2009

/Edan Orgad/
Supervisory Patent Examiner, Art Unit 2419